

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 4, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 121, 2/19/1999
HB 153, 2/19/1999
HB 154, 2/19/1999

Executive Action:

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HEARING ON HB 121

Sponsor: REP. BILLIE I. KRENZLER, HD 17, BILLINGS

Proponents: Beth O'Halloran, Staff Attorney, State Auditor
 Teresa Jennings, Direct Selling Assoc.
 Dick Bloemendaal, Corporate Counsel, Amway Corp.
 Lyla Knutson, AARP
 Kelley Hubbard, MT Senior Citizens Assoc.
 Brad Griffin, MT Retailers Assoc.
 Annie Bartos, Chief Counsel, Department of Commerce

Opponents: Mike Fellows, MT Libertarians

Opening Statement by Sponsor:

REP. BILLIE I. KRENZLER, HD 17, BILLINGS. This bill gets a handle on pyramid schemes, which are a type of fraud perpetrated on the telephone, the Internet or face-to-face. Collapse of pyramid schemes is inevitable and when it happens, Montana citizens have lost their hard-earned money. This bill is offered with the support of the multi-level distribution industry, consumers and regulators. It establishes a framework for enforcement and investigation of pyramid schemes in light of the recent developments in the law and in the industry of multi-level marketing. The major components are prohibiting and criminalizing the promotion of a pyramid scheme and the filing of a notice of activity and consent to service and process by multi-level distribution companies. This bill is drafted to protect both the consumer and the legitimate multi-level companies.

Proponents' Testimony:

Beth O'Halloran, State Auditor. Normally the State Auditor's office investigates and prosecutes pyramid schemes under the jurisdiction we assume over securities. The pyramid issues that arise when we attempt to prosecute them as securities, is gone after a certain period of time. These days, pyramid companies try to disguise themselves as legitimate multi-level marketing companies, which perpetuates the criminal enterprise. We desire to take cases to county attorneys with clear cut elements and updated definitions of pyramid schemes and **HB 121** helps us do that. In developing this legislation, we've worked with the Direct Selling Association and its members to prevent an over-broad approach, which would unfairly inhibit legitimate business. The bill defines & criminalizes the pyramid promotional scheme and gives filing requirements by multi-level distribution companies. Using this tool gives us the luxury of preventing the proliferation of bad-actor schemes by determining who hasn't filed with our office. We can compel filing of the documents or order cessation of operations if the filing isn't made. This bill will cost very little to the state because we already investigate and prosecute and it also makes it easier to deal

with cases more efficiently and effectively. I urge you to support **HB 121**. I will leave copies of **EXHIBIT (bus49a01)**, **EXHIBIT (bus49a02)** and **EXHIBIT (bus49a03)** with each member.

Teresa Jennings, Direct Selling Association. She read her written testimony **EXHIBIT (bus49a04)**.

Dirk Bloemendaal, Amway Corporation. He read his written testimony **EXHIBIT (bus49a05)**.

Lyla Knutsen, AARP. We fully support the bill.

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Kelley Hubbard, Montana Senior Citizens Association (MSCA). We support this bill and would like to see it pass.

Brad Griffin, Montana Retail Association. We share many of the members with Direct Selling Association and we appreciate the sponsor bringing it forward. We think it draws a definite distinction between fraudulent outfits and legitimate businesses. We urge your support.

Annie Bartos, Department of Commerce. Our Consumer Affairs office works closely with the State Auditor's office on consumer protection issues. We believe **HB 121** is a good bill and urge its support.

Opponents' Testimony:

Mike Fellows, Montana Libertarian Party. I will read you a letter from Judy Bolton expressing opposition for **HB 121 EXHIBIT (bus49a06)**. The worst pyramid scheme in this country is Social Security and I wish our State Auditor would do something about it. The bill will require people who buy products from Amway, Shaklee, Avon, etc., to register in the state and I think that's wrong; therefore, we oppose the bill. We want to get rid of the folks who harm others and promote the scams but that can be done without requiring the whole society to register with the state.

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked if it was all distributors who have to be registered, or was it just the company. **Beth O'Halloran** said only the company would be required to register; not individual distributors.

SEN. SPRAGUE asked why the bill would cost \$5,000 to administer. It seemed to him registered companies would display a logo, sign, or whatever, and if a company didn't have it, it couldn't file and would be easy to prosecute. **Ms. O'Halloran** said the \$5,000 was a positive impact on the General Fund because they were anticipating additional revenue through ease of prosecution. As for the registering, it was more of a notice filing the company was doing business in Montana. They anticipated the filing would be done by legitimate companies.

SEN. SPRAGUE said pyramids were illegal at the federal level but some saw multi-level marketing as an upside-down pyramid. How was the public going to be educated on what constituted a pyramid? **Ms. O'Halloran** said they were trying to educate the public about pyramid schemes through its website and prosecutions; however, what ultimately comes out is the difference between a legitimate and illegitimate business is pyramid schemes recruit people who purchase the right to recruit other people to make compensation off the recruitment.

SEN. SPRAGUE asked if the bill would make the State Auditor's office the Better Business Bureau. **Beth O'Halloran** said it didn't go to that level; in fact, consumers were already calling them to find out whether insurance producers are registered in Montana, whether they're in good standing, etc. They anticipated consumers calling their department whether certain multi-level distribution companies filed with the state or if there was an investigation underway.

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SEN. BEA MCCARTHY asked **Teresa Jennings** for comment. She said the Direct Selling Association had an education foundation which put together a booklet which identified four factors that distinguish between a pyramid scheme and legitimate multi-level marketing. A pyramid scheme will generally have high introductory costs because they want to get their money up-front; whereas, a legitimate company wants to keep the up-front money low so it encourages people to try direct selling. Pyramid schemes pay on recruitment of people while legitimate multi-level companies pay not only on recruitment but also on sales. Pyramid schemes don't have legitimate retail sales nor does it give money back, as legitimate companies do.

SEN. GLENN ROUSH asked if the bill gave the consumer the benefit of the compensation. **Ms. Jennings** said the bill benefitted Montana consumers, State Auditor's office and companies trying to do legitimate business. "Compensation" is defined because it's used in the substance of the bill; however, "compensation" didn't

mean someone was getting a benefit. **SEN. ROUSH** commented the consumers in his district were being misled.

SEN. VICKI COCCHIARELLA referred to **EXHIBIT 2** and asked if **Beth O'Halloran** handed it out. **Ms. O'Halloran** said their office was on a list to receive FAXes and the type of program in **EXHIBIT 2** was what they wanted to look hard at.

SEN. COCCHIARELLA asked how the State Auditor's office would keep track of the FAXes received and how they would know who was doing what. **Beth O'Halloran** said they would initially send out a letter of inquiry to determine what the program was so they would know, whether or not, it was legitimate. Then they would determine if the program had filed with the state and would work with them if they hadn't, because that would help determine their legitimacy.

SEN. COCCHIARELLA asked how consumers would know this protection was there. **Ms. O'Halloran** said once the bill was passed, they would do public outreach and encourage people to call if they had a question. They try to catch these programs before someone gets hooked but it can't be done if they're operating on a complaint by a person after it happened. This bill allows us to be a little more preventative.

Closing by Sponsor:

REP. KRENZLER closed. I believe anyone who is opposed to this bill doesn't fully understand it because it protects the rights of the consumer as well as those of the legitimate business. It draws clear lines between the legitimate multi-level marketers and the pyramid schemes. It will also provide a law for the enforcement tools necessary to go after the scam artists. If your constituents have questions, I would be happy to send them some information.

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HEARING ON HB 153

Sponsor: **REP. DONALD HEDGES, HD 97, ANTELOPE**

Proponents: **David Fulkerson, Chairman, Board of Funeral Services**
Jered Scherer, Board of Funeral Services
Robert Throssell, MT Assoc. of Clerks & Recorders
Jean Ruppert, Board of Funeral Services

**Steve Yeakel, Executive Director, MT Funeral
Directors Assoc.**

Opponents: Jock Anderson, Loewen Group

Opening Statement by Sponsor:

REP. DONALD HEDGES, HD 97, ANTELOPE. This bill has been in the making for three or four years through the Board of Funeral Services. The meat of the bill is the pre-need funeral arrangements and is included because the Board of Funeral Services believed they had management surveillance over those doing pre-need. However, some of the funeral homes felt those contracts could be made by those in the industry that weren't licensed morticians. This opened the door for eventual court hearings. This bill addresses that issue and requires pre-need funeral contracts to be handled by a licensed funeral director or mortician. The reason for this is current statute allows that under general supervision of a licensed mortician a person could write pre-need contracts.

Another area of **HB 153** allows for the filing of a deed for the sale of lots in a for-profit cemetery area, and a friendly amendment will be coming from the Clerks & Recorders to change some of the language.

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Proponents' Testimony:

David Fulkerson, Fulkerson Funeral Home, Plentywood. He read his written testimony **EXHIBIT (bus49a07)**.

Jered H. Scherer, Mortician, Billings. He read his written testimony **EXHIBIT (bus49a08)**.

Robert Throssell, Montana Association of Clerks & Recorders. We want to help our community members and maintain a record of the purchase of cemetery plots. I will explain the amendments **EXHIBIT (bus49a09)**. We found a problem with the bill in the use of the term "deed" because in the Clerk & Recorder's Office, "deed" is a special document you receive when you purchase your house, your property, etc. Our laws have an indexing requirement which could be tied into surveying, taxation, etc. As a practical matter, "deed" would allow Clerks & Recorders to set up a separate book, Cemetery Conveyances, and family members could check to see if the plot had been purchased.

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The last two amendments are tied together. "Filing" in the office of the Clerk & Recorder means the permanent maintenance of that original document. There can be a space problem in storing these documents and they also are subject to deterioration. This makes the storage more expensive; therefore, the substitution of "recorded" for "filed", which covers the process of microfilming. In other words, the process of the Clerk & Recorder handling the document would be streamlined because the microfilm would be available for certified copies and the family would have the original document in its possession.

Jean Ruppert, Board of Funeral Services. She centered her remarks around **EXHIBIT (bus49a10)** and stressed it was important to keep it under the morticians.

Steve Yeakel, Montana Funeral Directors Association. We're supportive of the changes in the first and second parts of the bill, as well as the amendments. The content of the final section is not new law, but is current existing law in another area of the statute. The Association is in support of **HB 153.**

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Opponents' Testimony:

Jock Anderson, Loewen Group. He paraphrased his remarks from **EXHIBIT (bus49a11)** and presented **EXHIBIT (bus49a12)** as part of his testimony.

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Questions from Committee Members and Responses:

SEN. BEA MCCARTHY commented she was used to funeral homes which had one licensed mortician and other staff. She referred to Page 5-6 and asked about the new definition of "mortician" and said it sounded like every person working in the firm must be a licensed mortician. **Jered Scherer** said the selling of pre-need and at-need required a licensed mortician.

SEN. MCCARTHY commented if the owner of a mortuary was not a licensed mortician but hired one who was, that owner could nothing but provide the money. **Mr. Scherer** said the owner could provide the management, but not the technical part, including directing the funeral.

SEN. MCCARTHY commented currently, the mortician came in to do the embalming and be present for the funeral service; however, the bill asked that the mortician do everything. She said there

weren't too many licensed morticians; in fact, at times if the mortician was on vacation, someone else would have to be brought in. She said under current law, the owner could make all the arrangements and **HB 153** would make it mandatory for a licensed mortician to do everything. **David Fulkerson** said the notion that the owner could currently sell pre-need or at-need was incorrect; in fact, a licensed mortician was required to do that, and it has been that way since 1962. He said it was their intent to keep it that way in order to protect the public.

SEN. MCCARTHY commented she had been through a number of funerals in the past five years and in most cases she did not think she had dealt with a mortician when making the arrangements. **Mr. Fulkerson** said a few licensed funeral directors who were licensed under grandfather provisions in 1962; however, they were now deceased or retired. Since it was already in law a licensed mortician do that, **HB 153** would continue it.

SEN. MCCARTHY asked about accredited morticians' schools. **Mr. Fulkerson** said there were about 38, with the closest being in Portland.

SEN. MIKE SPRAGUE asked if there was a difference in licensing in a funeral director vs. a mortician. **David Fulkerson** said in some states there was; however, in Montana, since 1962, the only licenses issued were those of a mortician.

SEN. SPRAGUE commented he had recently made funeral arrangements but not with a licensed mortician. **Mr. Fulkerson** commented **SEN. SPRAGUE** was not well-served.

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SEN. MCCARTHY reviewed current law made it mandatory for everyone dealt with at the funeral home to be a licensed mortician. **Mr. Fulkerson** agreed.

SEN. SPRAGUE said he made arrangements with an employee of the city of Billings who handled the municipal burial ground for the ashes of a body deceased in Texas. He asked if this employee was basically the funeral arranger. **David Fulkerson** said this person was a cemetery employee and not a funeral arranger, as per the definition. **Melody Brown, Board of Funeral Services**, said that situation was not the actual making of funeral arrangements, i.e. embalming, buying a casket, etc. This bill does not intend to address what **SEN. SPRAGUE** was referring to; rather, he was talking about having cremated remains buried and a mortician wasn't needed for that. She said the situation referred to by

SEN. MCCARTHY was different in that if the person you're dealing with is the spouse, parent, etc., of the owner of the funeral home and you talk about caskets, embalming, the service, etc., that person is operating outside the scope of the license. The mortician who is allowing such practice is aiding and abetting unlicensed practice. If a consumer had a complaint he or she needed to notify them so it could be investigated; if no one complained, the Board wouldn't know about it. The law really wasn't being changed; rather, some of the definitions were clarified.

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Closing by Sponsor:

REP. HEDGES closed. The licensing requirements don't change what's been on the books and when we think of other professions, I think we want to continue these licensing requirements with that level of knowledge and competence in the pre-need area. Current law was intended to be that; the punctuation should be a semi-colon rather than a comma. This bill addresses the need to put the pre-need contract money into a Montana institution where it is insured so the people making the pre-need arrangements have a Montana guarantee the money will be there when it's needed.

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HEARING ON HB 154

Sponsor: **REP. STEVEN J. GALLUS, HD 35, BUTTE**

Proponents: **REP. JOE QUILICI, HD 36, BUTTE**
Gary Speeth, State Auditors Office
Jack Gregg, MT Collision Repair Specialists
Ron Ashabraner, State Farm Insurance
Annie Bartos, Chief Counsel, Department of Commerce
Debbie Berney, Professional Insurance Agents of MT
Steve Wilkinson, Northwest Glass
Pat Stroff, Billings
Mike Oliver, Billings

Opponents: **Bob Gilbert, Cascade Auto Glass**
Brad Nelson, Cascade Auto Glass
Dan Carter, Pinnacle Glass Co.

Opening Statement by Sponsor:

REP. STEVEN J. GALLUS, HD 35, BUTTE. I bring today **HB 154**. The goal of this bill is to clarify existing prohibitions against auto repair incentives. In 1997, there was a bill that was passed and this bill just elaborates on that one. There are three objectives of the bill. It tightens the provisions on rebating of deductibles for the repair of glass and auto bodies. It takes present law that just applies to the rebating of deductibles for windshield replacement and also applies it to auto body repairs. It allows the state auditor and the Department of Commerce to enforce these provisions.

Proponents' Testimony:

REP. JOE QUILICI, HD 36, BUTTE. This is one of the best bills I have seen that will really protect consumers and also protect Montana's small businesses. I have been in the glass business for over 40 years and feel that I can speak to it. I have never carried a glass bill in all the 30 years that I have been in the legislature. What has happened is that entities are coming into our localities. They have a lot of money behind them. They pick a person that has installed windshields. They train this person and then get paid so much an hour to work for them. They deliver the windshield to a garage, then they work with the insurance companies and install these windshields. They give rebates. That is fine, but some of these guys are working out of their own garage, paying their own personal property tax, but they don't have to pay their glaziers, their benefits and business property tax. If we don't do something, the small glass shops are going to be put out of business in this state.

Gary Speeth, Deputy State Auditor. The last 3-4 years I have been dealing with auto body and glass regulations in the State of Montana. This falls in my area of responsibility. We bring this bill for several reasons. First I would like to hand out a fact sheet **EXHIBIT (bus49a13)**. One reason we got involved is we receive many complaints and inquiries from insurance agents and consumers. We deal with other states that have similar laws about deductibility and rebating of your deductible. We looked at things that were changing particularly with the telemarketing aspect. The vast majority of shops do not give rebates for deductibility. Some of the newer shops do give something that looks like a cash consumer discount. Every time I have a chance to look at a bill that an insurance company receives, there is generally a charge to the insurance company as a result of someone giving a cash incentive. We think it is a rebate and that is why this bill clarifies what an incentive is and what a

rebate is. The most recent incident concerns a person who was charged \$355, was given \$100 as a cash incentive, and then the insurance company was billed \$255. The insurance company paid \$255 for the installation. I checked with a couple of other installers in the area and they would have billed the insurance company \$205 for installing that glass minus \$100 deductible which would make the insurance company pay \$105 for the installation of the windshield. They ended up paying \$100 more for the installation.

The other problem in our office as a result of these deals is that the consumers are calling frequently. One individual called and said they had a problem with a glass, but they decided to wait for spring and wouldn't have rock chips on the new windshield. But someone called the wife through telemarketing and convinced her to go ahead and do it. They installed the windshield the next day. It was not a good job. They called back but couldn't get anyone. Couldn't find them at the local address. So we feel this bill will take care of these sorts of problems. We feel the money to pay for these situations comes out of policy holders through their premiums.

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Jack Gregg, MT Collision Repair Specialists. We endorse this bill. It is an issue of fairness for both the repairers and the insurance companies and the body shops. We want the field to be level and have everyone playing by the same rules. Rebating, incentives or other things that affect the deductible is not good. That portion, the deductible, is between the insurer and the insured.

Ron Ashabraner, State Farm Insurance Co. I would like to thank the sponsor of this bill. We worked on this issue for many years. State Farm insures approximately 1/3 of the automobiles that are insured in the state. This is a good bill.

Annie Bartos, Chief Legal Counsel, Department of Commerce. We also support this bill. We have jointly enforced the provisions of the auto glass bill during the last year in a legal proceeding and our offices concurrently believe that this is a consumer protection bill. Thank you for your support.

Debbie Berney, Professional Insurance Agents of MT. I have had an experience with glass repair myself. There was a \$250 difference between an insurance payment and a cash rebate on a windshield. This costs every consumer in the state. We ask for your support of this bill.

Steve Wilkinson, Northwest Glass, Billings. I am President of the MT Independent Glass Dealers Assoc. The vast majority of our members do not pay deductibles. We want to compete for our hometown customers on a level and legal playing field.

Pat Stroff, Magic City Glass, Billings. I urge you to please support **HB 154**. It is vital to our survival.

Mike Oliver, Econo Glass, Billings. We are a glass distributor as well as installers. We believe this bill is good for the economy of Montana and all the customers we serve as a retail and as a wholesale entity. Thank you.

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Opponents' Testimony:

Bob Gilbert, Cascade Auto Glass. I understand the concerns that are out there. My clients don't believe in someone fixing auto glass in a garage either. That is an isolated incident. But there are other reputable glass dealers who want to operate in Montana and who want to advertise and promote and that is not illegal. Car dealers, grocery stores, hardware stores, etc. give rebates and discounts. That is part of being in the business. This bill is like saying that Sandy's Restaurant in the basement of the Capitol cannot give free coffee cups anymore because the restaurant over in the Department of Labor doesn't. And this would affect their business. This is what advertising is all about. If someone has a windshield replaced, the insurance company agrees to pay "X" amount with \$100 deductible and the insured pays the \$100 deductible, it is not wrong if the dealer wants to give the person a turkey. Is the Auditor's Office going to tell us that we can't do anything anymore? There is a problem but this bill is not the solution. We would be willing to work with the sponsor to provide a better solution. The new language is very confusing. It needs clarification. There are statutes to enable prosecution of some of the cases that have been spoken of but the Department did not do that. I would suggest you table this bill or work together with the sponsor to make it work the way it should.

Brad Nelson, Cascade Auto Glass. We have locations in Missoula and Kalispell. You have received some phone calls and we did initiate those calls. We wanted people to contact their Senators. The concern that I heard from **REP. QUILICI** and others is that someone has to be paying for this. No one has a concern when it is just cash. The concern is when the insurance company becomes involved. When you buy a new car and talk price and there is a rebate involved, you encourage people to come in and

negotiate. The concern of involving the insurance company is the thought that the cost will be passed on to the company and therefore on to the people they insure. I would like to hand out some fact sheets **EXHIBIT (bus49a14)**. The first two sheets you have already seen. On pages 3 and 4, the insurance companies tell us how much money they are going to pay for a particular job. In many cases they know more about glass, at least the financial aspects of glass, than many glass shops. They know down to the penny how much something is going to cost in order to get it replaced. A promotion for anything we are engaged in is being paid for by me. It comes out of my pocket. We are trying to attract business. **REP. QUILICI** said that people are being put out of business, but this piece of legislation does not address that issue and does not protect those people. People get better service and price with competition. For all these reasons, we oppose this bill.

Dan Carter, Pinnacle Glass Co. I am a third generation Montanan. Like many others in this room, my grandparents were offered an incentive to come west and homestead. The incentive was free land and they took it. I have been in business since 1981 and in the glass business in 1988. We have locations in Great Falls, Missoula, Billings and Butte. We are not an outside company. So the idea that outside businesses are driving out the local businesses is not true. The reason that this bill was brought forth was to clarify the previous bill that is in force right now. The previous bill was determined to be enough of a problem in enforcing the law, that the State Auditor's Office proposed this bill. It's title is "An Act to Clarify. . . I would propose that it does nothing to clarify anything. The bill speaks to incentives. An incentive could be a guarantee, a promise to help with tax paper work, wash a car, pick up and delivery, or the smile on my face. The current law has not been enforced up to this date and this bill, as proposed, does nothing to clarify this.

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Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked **Brad Nelson** about the telemarketing script that they used. **Mr. Nelson** said he did not have the actual wording but we asked them to identify themselves, to tell why they were calling, what **HB 154** would do concerning incentives and the repair of windshields and then to call their Senator and ask him to oppose the bill. Many of the people called had a number of questions. How those questions were answered was unknown. There were 12 people calling who did know the business of windshield repair. This is the first time that he had done

this type of telemarketing and hoped that what he had done was fine. We did not target any specific group of people.

SEN. MIKE SPRAGUE asked **Annie Bartos** to clarify the difference between incentive and rebate. **Ms. Bartos** said that in a previous case that her Department had handled, the auto glass company was offering an incentive in buying back damaged, used glass and was paying \$100 for this glass. (It was noted that there is no use for broken windshields.) This "incentive" was found by the hearing examiner to be a violation of the law that is in existence. That was classified as an incentive by the hearing examiner. In terms of a rebate, she felt that the \$100 would be utilized to pay the deductible that the customer would need to pay to the insurance company.

SEN. SPRAGUE asked **Mike Oliver** if his company was a wholesale and retail company. **Mr. Oliver** said yes. **SEN. SPRAGUE** then asked if the price for windshields would be relatively the same at different shops unless he know that the dealer was a wholesaler as well as a retailer. **Mr. Oliver** said the purpose of their being a wholesaler is just to supply glass to the small shops. On the issue of shopping around for a good price, if a person has an insurance company which has approved vendors, which his company is, they would say go have it done. The customer would pay the deductible and they would bill the insurance company the remainder of the bill based on the fixed rate which has already been established. This is the way he works with 90-95% of the insurance companies.

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SEN. DALE BERRY asked **Ron Ashabraner** if they have a standard price list for the replacement of different windshields. **Mr. Ashabraner** said that each company has worked out with the glass shops in the different geographical areas an arrangement that they would pay for different windshields. Since this is proprietary information, he had no idea what other companies pay. They survey an area, meet with the glass shops and come to an agreement on what the payment will be for different windshields, the kit, etc. It varies according to the car and to the area. The company wants to see that the shops get a fair price for their product. The incentive issue is where everyone here buys auto insurance. You pay a premium. Whether you want to call it a discount or rebate or whatever, his company does not feel that it is fair that a vendor of a product such as windshield glass, should give one of you something when all the rest of you have paid for it. Regardless of what you want to call it, someone is paying for it.

SEN. BERRY then asked when State Farm pays the glass company, are the people, who are giving out the rebates or incentives, collecting more from the insurance company than the installers who are just saying "no" here is the price and the client pays the deductible. **Mr. Ashabraner** said that it is based on the geographical location so they could accept less or they could make it more competitive. His company just wants to keep the shops in business. In some areas there is an artificial price to begin with. There are two major companies. Some will give us between a 65% discount and up. That is taken into consideration. We just reach an agreement with the shops.

SEN. COCCHIARELLA asked **Steve Wilkinson** that if the client has cash to pay for a new windshield, the cost is less. Then she asked if he has a set price that you charge and get reimbursed by the insurance company for glass. **Mr. Wilkinson** said the big insurance companies all pay a set price. They are not quite as fair, they don't break it down by the geographical areas. The small shops cost more because they have to pay shipping, boxing, etc. They don't buy as much or install as many. So to stay in business in a small town, they have to charge more. Everything costs more in a small town. There are two prices in the glass industry. There is a cash price and then there is an insurance price. Not everyone does the same thing. When a shop does accept cash, they don't have to go through the billing process nor wait for the money.

SEN. COCCHIARELLA then said, is that not a discount? **Mr. Wilkinson** said "yes", they do discount cash prices.

SEN. COCCHIARELLA asked **Mr. Speeth** if a cash discount would be disallowed under this bill. **Mr. Speeth** said that the bill should not be a problem for a discount for cash. What this bill addresses is when a shop advertises that they will install the windshield as an insurance claim and they will do it for free and the customer does not have to pay anything out of pocket. Then there are different ways that the shop can do this. Sometimes insurance companies will call us up and tell us the customer has had the windshield installed before even contacting the insurance company. The insurance company will contact his office and say they feel the price is above market value in this area and what can they do about it. He tells them to deny the claim, but the insurance company responds that their client may get hassled by a collection agency, etc. and be unhappy with them. So it is not such a set price out there as everyone might like to believe. His department thinks the bill will solve a lot of these problems.

SEN. COCCHIARELLA wanted someone to show her where in the bill doesn't impact that discount ability. **Mr. Speeth** said they had looked at other states. In the enforcement action they have experienced a position taken on the other side that if they (lost a part of the sentence) If they don't use the word rebate then that can be a help. The comma in Section 1, a on line 17 and 18 can be a starting point.

{Tape : 2; Side : B; Approx. Time Counter : 0}

SEN. SPRAGUE asked **Mr. Carter** about cash discounts. Realizing that many people don't have comprehensive insurance, did he feel that this bill eliminates the ability to negotiate. **Mr. Carter** said that the tenets of the previous bill was that the shops treat cash customers and insurance customers equally in the incentives. That has been carried forth. This bill does not want to get mired down in a pricing issue. There is not time to grapple with the pricing issue across this industry. This bill specifically addresses incentives. Everyone here seems to be confused. This is a bad bill and will only get worse. His smile, or he is from Montana, or because the shop picked up your car, etc., is now being looked at as a possible criminal act. Even more confusing is currently there are exemptions that are allowed.

SEN. FRED THOMAS asked **Mr. Carter** when he charges for glass, does he always use the same price. **Mr. Carter** said "no, absolutely not." Each insurance company uses their clout to force their price down our throats. **SEN. THOMAS** then asked if his company is not forced to pay so much, does he always use the same starting price. **Mr. Carter** said, there again, it depends on so many things.

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Closing by Sponsor:

REP. GALLUS closed. The key word in this bill is who these companies advertise. It is not how they conduct their business on a cash basis. It is how they lure people in. The offer of \$100 to pay the deductible will bring people in. This bill address how they go about their marketing. Next, in response to some of the testimony, these cases are not isolated. It doesn't come out of the bottom line. It is out of all our premiums. Major corporations have the money to have lower prices for a period of time till they drive out smaller businesses. Then prices go up. This bill will protect lots of small businesses. I urge your support for this bill.

ADJOURNMENT

Adjournment: 11:45 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus49aad)